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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

1 JANE DOE, an individual,
2 Plaintiff,
3 v.
4 THE CITY OF SAN DIEGO, et al.
5 Defendants.
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7

Case No. 12-cv-00689-MMA (DHB)

**SUPPLEMENTAL BRIEF IN
SUPPORT OF PLAINTIFF JANE
DOE'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Date: February 25, 2014
Time: 2:30 p.m.
Courtroom: 3A
Judge Michael M. Anello

8 Plaintiff Jane Doe hereby submits this Supplemental Brief in support of her
9 Motion for Partial Summary Judgment, as follows:

10 **I. ON FEBURARY 18, 2014, THE *REMITTITUR* WAS ISSUED IN**
11 **AREVALOS' CRIMINAL CASE AND THUS THE CRIMINAL**
12 **CONVICTION AGAINST AREVALOS MAY BE USED AS**
13 **COLLATERAL ESTOPPEL AS TO HIS ASSAULT AND**
14 **BATTERY OF PLAINTIFF JANE DOE**

15 On February 18, 2014, the Court of Appeal Fourth District issued the
16 remittitur in Officer Arevalos' criminal appeal. (See Exhibits CC and DD, Court
17 of Appeal Opinion and Remittitur, respectively, attached to the Second
18 Supplemental Notice of Lodgment filed concurrently herewith.) As the criminal
19 conviction against Officer Arevalos is *now final*, the conviction may be used as
20 *collateral estoppel* as to his assault and battery of Plaintiff Jane Doe.

21 In determining the preclusive effects of a judgment obtained in a prior state
22 court proceeding, "federal courts apply the collateral estoppel rules of the state
23 from which the judgment arose." *Garrett v. City and County of S.F.*, 818 F.2d
24 1515, 1520 (9th Cir.1987). Under California law, the principles of collateral
25 estoppel mandate that any issue necessarily decided by a court of competent
26 jurisdiction in a criminal proceeding is conclusively determined as to the parties
27 or their privies if it is involved in a subsequent civil action. See *Zevnik v.*
28 *Superior Court*, 159 Cal.App. 4th 76, 82 (2008); *Miller v. Superior Court of Los*

1 *Angeles County*, 168 Cal.App.3d 376, 381 (1985); see also *Mueller v. J. C.*
2 *Penney Co.* 173 Cal. App. 3d 713, 719 (1985) (a pending habeus writ *does not*
3 prevent use of collateral estoppel).

4 Officer Arevalos, a defendant in this action, is absolutely precluded from
5 relitigating the issues concerning his assault and battery of Plaintiff in this action.
6 As such, Defendant City of San Diego will also be precluded from relitigatating
7 the criminal conviction. (See *Miller, supra*, 168 Cal.App.3d 376, 382-386 (1985)
8 (Court issued a writ of mandate directing the respondent superior court to vacate
9 its order denying the plaintiff's motion for summary adjudication; the plaintiff, a
10 victim of a rape committed by a police officer who had been employed by the
11 City, sought adjudication on the issue of rape in the underlying civil action and
12 the court held that the criminal conviction of the officer *collaterally estopped the*
13 *city* from arguing that against the rape.); *Taylor v. Ron's Liquors, Inc.*, C 10-
14 00694 SI, 2011 WL 4634091, *3-5 (N.D. Cal. Oct. 6, 2011) (conditionally
15 granting plaintiff's motion for summary judgment of liability on the claims of
16 sexual battery and battery alleged against defendant on theory that those claims
17 have been *conclusively established* by defendant's criminal conviction for the
18 rape of plaintiff; the defendant is collaterally estopped from relitigating the issue
19 of plaintiff's consent)).

20 *Miller* involved facts starkly similar to those here. *Miller* was a civil
21 lawsuit for damages against a Los Angeles Police Department officer who had
22 previously been convicted of having raped the plaintiff-victim. *Miller*, at 382-
23 386. Because the officer was a party to that proceeding, he was precluded from
24 relitigating the jury's verdict finding him guilty. Although the City of Los
25 Angeles was *not a party* to the criminal proceeding, the *Miller* Court held that it
26 was collaterally estopped from litigating the issue whether the officer had raped
27 the plaintiff-victim. *Id.*; see also *Teitelbaum Furs, Inc. v. Dominion Ins. Co.,*
28 *Ltd.* (1962) 58 Cal.2d 601, 605 (plaintiff corporations (who were alter ego of

1 corporate president), who had been convicted in criminal proceedings of theft
2 and filing a fraudulent insurance claim, sued the defendant insurers to recover for
3 the same loss which had been involved in the criminal proceedings; California
4 Supreme Court held that collateral estoppel defeated the plaintiffs' action, since
5 the jury's verdict against the corporate president necessarily found against the
6 plaintiffs on the issue of how the loss occurred.)¹

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8 Dated: February 24, 2014

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11 By: /s/ Linda G. Workman
12 Linda G. Workman,
13 Attorneys for JANE DOE, Plaintiff
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27 ¹ It is noteworthy that in its opposition to Plaintiff's motion for summary
28 judgment, Defendant argued *only* that "Plaintiff cannot rely on principles of *res*
judicata to conclusively establish that a sexual assault occurred" since the
conviction is not yet "final." (City's Opp. 1, 15-18.) Since the criminal action is
final, Defendant's objection to application of collateral estoppel fails.